

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SCHUYLKILL COUNTY COURT RELATED :
EMPLOYEES UNION :
 :
v. : Case No. PERA-C-16-342-E
 :
SCHUYLKILL COUNTY :

FINAL ORDER

Schuylkill County (County) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on June 6, 2017, challenging a Proposed Decision and Order (PDO) issued on May 18, 2017. In the PDO, the Board's Hearing Examiner concluded that the County violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by refusing to arbitrate two grievances filed by the Schuylkill County Court Related Employees Union (Union) concerning the discharge of Karen Rogers and Michael Gavaletz. The Union filed a response and brief in opposition to the exceptions on June 23, 2017. After a thorough review of all matters of record, the Board makes the following:

AMENDED FINDINGS OF FACT

9. Maria Casey (Casey) was duly elected as Clerk of Courts for Schuylkill County effective January 4, 2016 and is considered a joint employer with the County within the meaning of the Act. Upon election and assumption of office, Casey notified the County and Union that she objected to the continuation of any provision of the CBA including Articles II, XV, XVI and XVII based on Section 1620 of the County Code. Casey's January 5, 2016 letter states, in relevant part, as follows:

Several provisions contained in this collective bargaining agreement infringe upon my right to hire, fire, and supervise my employees under Section 1620 of the County Code and other statutes applicable to my Row Office.

...

Therefore, for purposes of any negotiations that may take place between the County and the Court Related Union employees for a successor collective bargaining agreement, this letter shall serve as formal notice that I object to the continuation of any provision contained in the previous agreement which constitutes an infringement upon my right to hire, fire and supervise my employees under Section 1620 of the County Code, including the above-listed provisions. This is not to suggest that I would not, under any circumstance, agree to language relating to the subject matter of the provisions to which I am objecting. Rather, I am requesting the opportunity to participate in negotiations so that I may insure

that the interests of my office, and my 1620 Rights, as well as the rights prescribed by other statutes applicable to my Row Office, including 42 Pa.C.S.A. sections 2754(a), 2755(a), and 2755(c), are adequately preserved.

(SOF 9, Exhibit B).

12. On June 2, 2016 Casey advised the County Solicitor via email that she would be asserting her 1620 rights at any arbitration proceedings. Casey's June 2, 2016 email states, in relevant part, as follows:

Kindly be advised that I will be asserting my 1620 Rights at any arbitration and/or grievance proceedings. Please provide me with a complete list of dates and times of any proceedings so that this may be done.

Regarding the Clerk of Courts Office, you informed Fred that the Karen Rogers matter will be proceeding to arbitration. Again, I will assert my 1620 Rights here and expect to be provided with dates and times of any proceedings.

(SOF 12; Exhibit C).

DISCUSSION

The relevant facts of this case, as stipulated to by the parties, are summarized as follows. The Union is the exclusive certified bargaining representative for the unit consisting of court-related professional and nonprofessional County employees.¹ The Union and the County were parties to a collective bargaining agreement (CBA) effective from January 11, 2011 to December 31, 2015. Article XXXIV of the CBA states, in part, as follows:

This Agreement shall be effective January 1, 2011 and shall remain in effect until December 31, 2015. In the event that a contract settlement is not reached for any new contract prior to January 1, 2016 the terms and conditions of this contract shall remain in full force and effect until such time as a new Agreement and/or arbitration is reached.

(emphasis in original).

Concerning discipline or discharge of employees, Article XV of the CBA states that the County "shall not demote, suspend, discharge, or take any disciplinary action against any employee without just cause." The grievance procedure under Article XVI of the CBA provides that a dispute relating to

¹ On July 12, 1974, as amended on April 29, 1987, the Board certified the Union as the exclusive bargaining representative of "[a]ll full-time and regular part-time professional and nonprofessional non-court-appointed employees involved with and necessary to the functioning of the court including but not limited to the offices of Prothonotary, District Attorney, Public Defender, Clerk of Courts, Register of Wills and Sheriff."

the discipline of any bargaining unit member shall be settled by a step grievance procedure with the last step being heard before an arbitrator selected from a list obtained from the Pennsylvania Bureau of Mediation.

Maria Casey was duly elected as the County Clerk of Courts effective January 4, 2016. Upon election and assumption of office, Ms. Casey notified the County and the Union that she objected to the continuation of any provision of the CBA, including Article II (Management Rights), Article XV (Discharge, Demotion, Suspension, Discipline), Article XVI (Grievance Procedure) and Article XVII (Probationary Period, Promotions, Layoffs), based upon Section 1620 of the County Code.²

On or about January 8, 2016, Karen Rogers, a bargaining unit member, was terminated by Ms. Casey. On or about January 11, 2016, the Union filed a grievance challenging the termination of Ms. Rogers. On or about July 27, 2016, Michael Gavaletz, a bargaining unit member, was terminated by Ms. Casey. On or about July 29, 2016, the Union filed a grievance challenging the termination of Mr. Gavaletz.

Both grievances were processed in accordance with the grievance procedure, but the parties could not resolve them. Therefore, the Union notified the County of its intent to proceed to arbitration. The County's Solicitor informed counsel for the Union by letter dated October 28, 2016, that the County would not select an arbitrator based upon Ms. Casey's objection pursuant to Section 1620 of the County Code.

The Union filed its Charge of Unfair Practices on November 21, 2016, alleging that the County violated Section 1201(a)(1) and (5) of PERA by refusing to arbitrate the grievances filed on behalf of Ms. Rogers and Mr. Gavaletz. In lieu of a hearing, the parties submitted joint stipulations of fact to the Board's Hearing Examiner on February 24, 2017. The Union and the County filed post-hearing briefs on April 13 and May 12, 2017, respectively.

The Hearing Examiner concluded in the PDO that the County violated Section 1201(a)(1) and (5) of PERA by refusing to proceed to arbitration

² Act of August 9, 1955, P.L. 323, as amended, 16 P.S. §§ 101-3000.3903. Section 1620 of the County Code provides, in relevant part, as follows:

[W]ith respect to representation proceedings before the Pennsylvania Labor Relations Board or collective bargaining negotiations involving any or all employees paid from the county treasury, the board of county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers over the affected employees. The exercise of such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers.

under Section 903 of PERA. Concerning the County's argument that Section 1620 of the County Code precludes the Union from filing grievances challenging the discharge of Ms. Rogers and Mr. Gavaletz, the Hearing Examiner held as follows:

[T]he County is claiming that the grievances are not arbitrable because an arbitrator is arguably without the authority to apply the grievance procedures and the just-cause provision to the Clerk of Courts where, under Troutman v. AFSCME, District Council 88, AFL-CIO, 87 A.3d 954 (Pa. Cmwlth. 2014), appeal denied, 627 Pa. 761, 99 A.3d 927 (2014)], she has not consented, either tacitly or expressly, to those provisions and where she expressly objected to those provisions upon assuming office. The arbitrability of the grievances, however, must be submitted to and determined by an arbitrator, not this Board.

(PDO at 4).

In its exceptions, the County alleges that the Hearing Examiner erred in concluding that it violated Section 1201(a)(1) and (5) of PERA because Ms. Casey did not tacitly or expressly consent to the "just cause" or grievance provisions in the CBA. Therefore, the County argues that it is not required to submit the grievances to arbitration because those provisions are unenforceable upon Ms. Casey, citing Troutman v. AFSCME, District Council 88, AFL-CIO, 87 A.3d 954 (Pa. Cmwlth. 2014), appeal denied, 627 Pa. 761, 99 A.3d 927 (2014).

Pursuant to Section 903 of PERA, arbitration of grievances arising out of interpretation of provisions of a collective bargaining agreement is mandatory. 43 P.S. § 1101.903. Thus, it is well-settled that all disputes concerning arbitrability of a grievance under a collective bargaining agreement must first be presented to an arbitrator for determination. PLRB v. Bald Eagle Area School District, 499 Pa. 62, 451 A.2d 671 (1982); Chester Upland School District v. McLaughlin, 655 A.2d 621 (Pa. Cmwlth. 1995), aff'd per curiam, 544 Pa. 199, 675 A.2d 1211 (1996). The Board has consistently held that Section 903 of PERA requires that the question of arbitrability of the grievance must be presented to an arbitrator, even where the case involves a row officer's assertion of Section 1620 rights. Pennsylvania Social Services Union, Local 668, SEIU v. Cambria County, 18 PPER ¶ 18098 (Final Order, 1987), aff'd sub nom., Cambria County v. PLRB, 18 PPER ¶ 18209 (Cambria County Court of Common Pleas, 1987). Indeed, in Cambria County, supra, the Board expressly held as follows:

The facts of this case parallel those of *Service Employees International Union, Local 585, AFL-CIO-CLC v. Washington County*, 18 PPER ¶ 18026 (Final Order, 1986), where the County refused to arbitrate a grievance filed by an employe terminated by the district attorney. There, the County argued that under Section 1620 of the County Code the district attorney had the unfettered right to discharge his employe with no duty to arbitrate since he was not a signatory to the collective bargaining agreement. Citing Section 903 of PERA which provides that arbitration of disputes or grievances arising out of

interpretation of the provisions of a collective bargaining agreement is mandatory and *Lehigh County, supra*, the Board rejected the argument. The situation here is the same.

In the recent case of *Pennsylvania Labor Relations Board v. Bald Eagle Area School District*, 499 Pa. 62, 451 A.2d 671 (1982), the Supreme Court held that public policy dictates: "arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory." 499 Pa. at 66. In *East Pennsboro Area School District v. Pennsylvania Labor Relations Board*, 78 Pa. Commonwealth Ct. 301, 467 A.2d 1356 (1983), the Commonwealth Court stated:

It cannot too often be stated that Pennsylvania labor policy in the public area requires the submission to arbitration of disputes involving the collective bargaining agreement. *County of Allegheny v. Allegheny County Prison Employees*, 476 Pa. 27, 381 A.2d 849 (1977). By allowing the employer to unilaterally refuse to submit a dispute to arbitration would in effect allow the employer's interpretation to control. ... [T]he Supreme Court has made clear that questions of arbitrability must first be submitted to an arbitrator and that any refusal to arbitrate a dispute concerning a collective bargaining agreement is *per se* an unfair labor practice.

78 Pa. Commonwealth Ct. at 308-309. (Emphasis in original.) The situation here is no different.

18 PPER at 285.

The policy that questions of arbitrability be resolved by an arbitrator was set forth by the Supreme Court in Bald Eagle Area School District, supra, which made expressly clear that:

We have consistently held that "[t]he question of the scope of the grievance arbitration procedure is for the arbitrator, at least in the first instance" ... We remain convinced that on this issue *North Star* properly reflects the public policy articulated by the General Assembly in Section 903 of the PERA, 43 P.S. § 1101.903: "Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory." We so hold.

...

We ... hold that hereafter issues involving conflicts between a public sector collective bargaining agreement and fundamental statutory policies of this Commonwealth must be presented first to arbitration for determination, subject to appropriate court review of any award in conflict with such policies.

451 A.2d at 672-674 (citations omitted; emphasis in original).

The basic policy that arbitrability is a matter decided in arbitration has since Bald Eagle Area School District been repeatedly upheld by the courts. As the Supreme Court stated in Township of Sugarloaf v. Bowling, 563 Pa. 237, 759 A.2d 913 (2000):

In Bald Eagle Area School District ... we held that it was the arbitrator who was to first determine the arbitrability of a dispute arising under PERA. We declared that it was "folly [to allow] a full preliminary bout in the courts over the issue of an arbitrator's jurisdiction..." 451 A.2d at 673. We stated that to permit such preliminary wrangling in the courts over the issue of whether a matter was arbitrable would permit these labor disputes to become mired down in litigation; the Bald Eagle court declared that such a scenario was to be avoided in light of the fact that the legislature demanded that these disputes be settled via arbitration rather than litigation.

759 A.2d at 915-916.

Similarly, in Lancaster County v. PLRB, 761 A.2d 1250 (Pa. Cmwlth. 2000), the Board held that the county violated its duty to bargain under Section 1201(a)(1) and (5) of PERA when it refused to submit certain provisions to interest arbitration that had been identified by the president judge of the court of common pleas as allegedly infringing upon the court's power to hire, discharge and supervise its employees under Section 1620 of the County Code. The Commonwealth Court affirmed the Board's decision requiring that the issue of arbitrability be submitted to an arbitrator. The Court held that the county was required to submit all contested provisions to the interest arbitration panel because the authority to make the determination of whether those provisions would impermissibly infringe upon the court's rights under Section 1620 of the County Code was with the arbitrators and Court, not the Board.

Indeed, even more recently, the Commonwealth Court has continued to reaffirm the sound labor policy that arbitrability of a grievance is for an arbitrator in the first instance. Rebert v. York County Detectives Association, 909 A.2d 906 (Pa. Cmwlth. 2006); Pennsylvania Social Services Union Local 668, Service Employees International Union v. Cambria County, 579 A.2d 455 (Pa. Cmwlth. 1990). Consistent therewith, the Commonwealth Court has reviewed the ensuing arbitration awards where row officers assert that a reservation of Section 1620 rights precludes arbitration. See id.; see also County of Lehigh v. Lehigh County Deputy Sheriffs' Association, 52 A.3d 376 (Pa. Cmwlth. 2012); Lackawanna County v. Lackawanna County Deputy Sheriff's Association, 2008 WL 9405103 (Pa. Cmwlth. 2008) (unreported opinion), appeal denied, 600 Pa. 736, 963 A.2d 472 (2008). Thus, as recognized and expressly

held in Bald Eagle Area School District, supra, it is black letter law that the issue of arbitrability may not be litigated before the Board, and a refusal to arbitrate a grievance is a per se unfair practice.

Here, the Union filed grievances challenging the discharge of Ms. Rogers and Mr. Gavaletz and the County refused to process those grievances on the ground that Section 1620 of the County Code precluded contesting their discharges through the contractual grievance arbitration procedure. However, under the well-settled case law, whether the grievances are arbitrable is for an arbitrator to determine in the first instance, and the refusal to process the grievances is an unfair practice. Bald Eagle Area School District, supra; Chester Upland School District, supra; Township of Sugarloaf, supra; Lancaster County, supra. Therefore, the County's argument that Section 1620 of the County Code precludes arbitration to contest the discharge of Ms. Rogers and Mr. Gavaletz must be advanced before the arbitrator, and not before the Board.

Under binding precedent, the County committed a per se unfair practice by refusing to proceed to arbitration on the Union's grievances and the issue of arbitrability under section 1620 must be raised before the arbitrator. Id. Accordingly, the Hearing Examiner properly concluded that the County violated Section 1201(a)(1) and (5) of PERA. After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Schuylkill County are hereby dismissed, and the May 18, 2017 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this fifteenth day of August, 2017. The Board hereby authorizes the Acting Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SCHUYLKILL COUNTY COURT RELATED :
EMPLOYEES UNION :
v. : Case No. PERA-C-16-342-E
SCHUYLKILL COUNTY :

AFFIDAVIT OF COMPLIANCE

The County hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (5) of PERA; that it has struck names from the list of arbitrators provided by the Pennsylvania Bureau of Mediation; that it has offered to submit the grievances filed by the Union on behalf of Karen Rogers and Michael Gavaletz to arbitration; that it has posted copies of the Proposed Decision and Order and Final Order as directed; and that it has served a copy of this affidavit on the Union.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public